

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000786-001 DT

03/29/2012

COMMISSIONER MYRA HARRIS

CLERK OF THE COURT
K. Waldner
Deputy

HILL N DELL

PAUL A HENDERSON

v.

UBAH HALANE (001)

ANNA DAHLQUIST

KYRENE JUSTICE COURT
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case No. CC2011136645.

Defendant Appellant Ubah Halane (Defendant) appeals the Kyrene Justice Court's determination that she is guilty of a special detainer. Defendant contends the trial court erred. For the reasons stated below, the court affirms the trial court's judgment.

I. FACTUAL BACKGROUND.

On July 13, 2011, Plaintiff filed an eviction action. Although trial was set for July 19, 2011, because Defendant did not timely appear, Plaintiff was granted a default judgment. Defendant filed a motion to set aside the default judgment on July 22, 2011. Following a hearing on August 18, 2011, the trial court granted Defendant's motion. The trial court then—over Defendant's objections¹—set the matter for trial later the same day.

At trial, each party announced "ready."² Ms. McKay—the property supervisor testified on Plaintiff's behalf and presented evidence about Defendant's rent. The base rental obligation was for rent of \$65.00 per month³ with the remainder paid under Section 8.⁴ Rent was due on the first of the month.⁵ Payments after the 5th of the month incurred late fees which became due as of the 6th of the month.⁶

¹ Trial transcript, August 18, 2011, A.M. hearing, at p. 31, ll. 1–19.

² Trial transcript, August 18, 2011, P.M., bench trial at p. 5, ll.10–14.

³ *Id.* at p. 10, ll. 14–15; p. 34, ll. 7–25.

⁴ *Id.* at p. 10, ll. 16–18.

⁵ *Id.* at p. 10, l. 21.

⁶ *Id.* at p. 10, ll.22–25; p. 11, ll. 1–7.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000786-001 DT

03/29/2012

Ms. McKay also testified about the condition of Defendant's apartment. She said there was a problem with the front screen on the kitchen window as it was torn apart and the metal portion broken.⁷ She described this as a safety issue because the broken metal could have cut someone.⁸ Ms. McKay stated she notified Defendant about the repairs made to the screen and said (1) the repairs were due to the tenant's neglect; (2) the tenant was charged \$55.00; (3) payment was due by June 11, and (4) the tenant was informed that if she did not pay by that date, the Plaintiff would take further action.⁹ Ms. McKay described the damage to the window screen as appearing as if it was "pushed out possibly from the inside of the apartment."¹⁰ According to Ms. McKay, Defendant never protested this bill in writing¹¹ although she verbally disagreed with her responsibility for these damages.¹²

A second maintenance issue involved snaking a toilet. Ms. McKay testified Defendant complained her toilet was not flushing properly.¹³ When maintenance staff snaked the toilet on May 23, 2011,¹⁴ the repairman found a soap bar in the pipes. Plaintiff charged Defendant \$20.00—the minimum labor charge¹⁵—for the cost of the snaking after Ms. McKay determined the damage occurred because of tenant neglect or damage.¹⁶

Ms. McKay discussed Defendant's payments as well as the sending of the 5-day notice of Intent to Terminate the rental agreement and said Plaintiff refused to accept a partial rent payment.¹⁷ She stated she received Defendant's base rent of \$65.00 on July 5, 2011.¹⁸ Because the \$65.00 payment did not cover the total amount—rent plus damages—Ms. McKay believed Defendant owed, management would not accept the \$65.00 payment as the rent.¹⁹ Ms. McKay testified that on July 5, 2011,²⁰ she (1) posted the 5-day notice on Defendant's door and (2) sent a copy by certified mail. She asserted that although Defendant attempted to pay portions of the rent,²¹ at no time was the rent fully paid.²²

⁷ *Id.* at p. 16, ll. 11–18.

⁸ *Id.* at p. 17, ll. 1–2.

⁹ *Id.* at p. 17, ll. 24–25; p. 18, ll. 1–6.

¹⁰ *Id.* at p. 19, ll. 16–19.

¹¹ *Id.* at p. 21, ll. 8–10.

¹² *Id.* at p. 18, ll. 20–23.

¹³ *Id.* at p. 26, ll. 12–15.

¹⁴ *Id.* at p. 27, l. 20.

¹⁵ *Id.* at p. 29, ll. 1–13.

¹⁶ *Id.* at p. 27, ll. 11–18.

¹⁷ *Id.* at p. 35, ll. 18–25.

¹⁸ *Id.* at p. 33, ll. 6–8.

¹⁹ *Id.* at p. 33, ll. 13–16.

²⁰ *Id.* at p. 36, ll. 22–24; p. 37, ll. 113.

²¹ *Id.* at p. 37, ll. 20–25; p. 39, ll. 6–13; p. 40, ll. 16–22.

²² *Id.* at p. 37, ll. 14–17.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000786-001 DT

03/29/2012

On July 11, 2011, Defendant left \$75.00 in the drop box²³ with a notation on the money order that it was for the charges for replacing the window screen and removing the soap bar from the toilet.²⁴ This payment was returned to Defendant by certified mail²⁵ together with a letter informing Defendant (1) she had received a 5-day notice to terminate her tenancy; (2) Plaintiff would not accept the money order in the amount of \$75.00 because it was not payment in full; and (3) a breakdown of the money that was currently owed.²⁶ Ms. McKay received a third payment—for \$50.00—on July 13, 2011. This payment was also returned as it was not a full payment.²⁷

On cross-examination, Ms. McKay reiterated Defendant was given notice that the damages had to be paid within 30 days and said these notices were given on May 11, 2011, and May 23, 2011.²⁸ She also said (1) she informed Defendant that the \$75.00 claimed as damages would become part of the rent and (2) written notice of this was given before July 5, 2011.²⁹

Ms. Clay—Plaintiff’s assistant manager also testified about the schedule of charges and stated residents “sign it at move in.”³⁰ On cross-examination, she admitted she knew the Defendant was disputing the charges for repair to the screen and toilet.³¹

Defendant testified on her own behalf. She first spoke about continuing problems with the bathroom in her unit.³² She said (1) she was present when the repairman did the snaking and (2) she did not observe any bar of soap—on anything else—on the snake.³³ Defendant maintained the problem with the toilet was a plumbing issue and the landlord had the obligation to maintain the premises.³⁴ She also asserted that although Plaintiff alleged the rent was \$140.00, only \$65.00 of the amount allegedly due was rent.³⁵ Defendant also asserted she was not responsible for the window screen damage and suggested the damage was done by a third party—a thief—trying to access her unit. She said she called the police but they were unable to find anything.³⁶

Defendant also testified about her payments and said she purchased a \$65.00 money order on July 2, 2011, and dropped the money order off at the night drop box.³⁷ She said on July 5,

²³ *Id.* at p. 41, ll. 16–25.

²⁴ *Id.* at p. 43, ll. 10–16.

²⁵ *Id.* at p. 42, ll. 7–21.

²⁶ *Id.* at p. 42, ll. 15–21.

²⁷ *Id.* at p. 44, ll. 2–13.

²⁸ *Id.* at p. 86, ll. 12–19.

²⁹ *Id.* at p. 86, ll. 2–13.

³⁰ *Id.* at p. 98, ll. 18–23.

³¹ *Id.* at p. 106, ll. 12–16.

³² *Id.* at p. 109, ll. 1–21; p. 111, ll. 1–18.

³³ *Id.* at p. 112, ll. 1–25; p. 113, ll. 20–25.

³⁴ *Id.* at p. 114, ll. 7–16.

³⁵ *Id.* at p. 114, ll. 17–25.

³⁶ *Id.* at p. 115, ll. 3–25.

³⁷ *Id.* at p. 117, ll. 13–17.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000786-001 DT

03/29/2012

2011, Plaintiff sent her a “five-day notice in which the plaintiff alleged my rent to be \$50, and I was charged to be quote, unquote damage \$75, the total amount due indicated is \$125. Late fees continue to accrue at the rate of one dollar per day.” [sic.]³⁸ Defendant continued and stated she did not believe she was responsible for the repair charge but—because she felt the notice was threatening—she purchased the \$75.00 money order which was the difference between what she had already submitted and the amount Plaintiff claimed was due.³⁹ Defendant added the \$65.00 money order was not included (sent back) with the July 5, 2011, notice.⁴⁰ She also maintained she did not receive the July 7, 2011, notice until July 8, 2011, which was after the time she dropped off the \$75.00 payment.⁴¹ Although this notice requested \$140.00, Defendant argued she had already paid that amount as she had given Plaintiff \$65.00 plus \$75.00 which totaled the requested \$140.00.⁴² She also re-stated Plaintiff did not—at any time—inform her that Plaintiff would be counting the \$75.00 for the repairs as rent.⁴³ Defendant testified she purchased another \$50.00 money order to cover the late fees and submitted this payment on July 11, 2011. Defendant then argued:

Now if the Plaintiff will claim that I did not make all payments at once, then Plaintiff themselves [sic] had no knowledge that they were gonna [sic] need to charge me the \$50. This happened after the fact. So I’m even disputing the late fee of the \$50 because in actuality I was not late with my rent which \$65 portion of the rent for the tenant, nor, did I agree that the damage the Plaintiff is alleging to be my responsibility are [sic] my responsibility. So it appears by combining the damage amount to my rental amount of \$65 is what the Plaintiff implies in its—in its grievance filed with the Court that it became part of the rent. But that rule is not applicable to the facts of the matter.⁴⁴

On cross-examination, Defendant re-asserted her position that the \$75.00 damage amount was separate from rent.⁴⁵ She also stated she did not receive the initial \$65.00 rent payment back until the time of trial.⁴⁶ Defendant explained she did not send all three payments together because she did not know she was required to deliver all of the payments together.⁴⁷ She offered she paid the \$50.00 because (1) that was the difference between what she was asked to pay and the

³⁸ *Id.* at p. 117, ll. 17–23.

³⁹ *Id.* at p. 118, ll. 1–21.

⁴⁰ *Id.* at p. 118, ll. 10–12.

⁴¹ *Id.* at p. 122, ll. 3–20.

⁴² *Id.* at p. 122, ll. 21–24.

⁴³ *Id.* at p. 123, l. 3–13.

⁴⁴ *Id.* at p. 124, ll. 20–25; p. 125, ll. 1–7.

⁴⁵ *Id.* at p. 134, ll. 16–17; p. 136, ll. 1–2.

⁴⁶ *Id.* at p. 135, ll. 8–9.

⁴⁷ *Id.* at p. 137, l. 25; p. 138, l. 1; p. 141 ll. 10–25.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000786-001 DT

03/29/2012

amount she had already paid and (2) she had not yet received the money back from the Plaintiff.⁴⁸

The trial court found Defendant guilty of a special detainer because the Defendant did not tender the entire amount of rent at one time. Although the trial court recognized Defendant made attempts to tender separate payments for the total amount due, the trial court determined Defendant tendered the amount piecemeal.⁴⁹ The trial court ruled that because the payments were piecemeal, Defendant never paid the total obligation and therefore—under the law—the Plaintiff could reject the payments as partial payments.

Defendant filed a timely appeal raising four separate issues. Plaintiff filed a responsive memorandum. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUES:

A. *Did The Parties Properly Present Their Issues On Appeal.*

Plaintiff submitted a responsive appellate memorandum that exceeds the allowable page limits. Rule 8(a)(4) Superior Court Rules of Appellate Procedure—Civ. (SCRAP—Civ.) limits memoranda to 15 pages. Plaintiff’s memorandum is 20 pages. Because (1) Rule 8(a)(5) provides the Superior Court may modify or waive the requirements of this rule to insure a fair and just determination of the appeal and (2) because Defendant did not object to the excess pages, this Court waives the 15-page limit in this case.

Defendant submitted an appellate memorandum that failed to comply with Rule 8 (a)(3) as she failed to provide appropriate legal authority to support her position. For this reason, the Court finds the Defendant failed to properly present her issues for appeal. It is not enough to merely mention an argument. Briefs must present significant arguments supported by authority that set forth the appellant’s position on the issues raised. Failure to argue a claim usually equates with abandonment and waiver of the claim. *State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989). The Court is not required to become the advocate for the litigant and search the records and exhibits to substantiate a party’s claims. *Adams v. Valley National Bank*, 139 Ariz. 340, 343, 678 P.2d 525, 528 (Ct. App. 1984). Fundamental error rarely exists in civil cases. *See Monica C. v. Arizona D.E.S.*, 211 Ariz. 89, 118 P.3d 37, ¶ 23 (App. 2005). *See also Bradshaw v. State Farm Mutual Automobile Ins. Co.*, 157 Ariz. 411, 420 758 P.2d 1313, 1322 (1988) (doctrine of fundamental error in civil cases may be limited to those instances when a party was deprived of a constitutional right). Despite Defendant’s argument about a violation of her Fifth Amendment rights—involving an alleged dispute between the parties—this Court finds no fundamental error in this record.

⁴⁸ *Id.* at p. 140, ll. 10–18.

⁴⁹ *Id.* at p. 194, ll. 7–24.; p. 196, ll. 4–19.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000786-001 DT

03/29/2012

B. Did The Trial Court Err By Setting Trial In The Special Detainer On The Same Day It Granted The Motion To Set Aside.

This Court first notes Defendant raised an issue on appeal that was not presented to the trial court—whether the trial court issued a summons when it set the date and time for trial. An appellate court usually will not address issues that were not first presented at trial. *Town of South Tucson v. Board of Sup’rs of Pima County*, 52 Ariz. 575, 582, 84 P.2d 581, 584 (1938); *accord*, *Harris v. Cochise Health Systems*, 215 Ariz. 344, 160 P.3d 223 ¶ 17 (Ct. App. 2007). However, because Defendant objected to the immediate trial setting at her hearing on her Motion To Set Aside The Default —albeit on other grounds—this Court will address Defendant’s claim.

On appeal, Defendant argued the trial court issued a summons by scheduling a trial right after it granted her Motion To Set Aside The Default. Her claim reveals Defendant’s misunderstanding of the term “summons.” Although Defendant correctly located the rule for a summons in an eviction action—RPEA, Rule 5(a)(2)—she (1) omitted relevant portions of the Rule’s language⁵⁰ and (2) misunderstood the meaning of the word. According to Black’s Law Dictionary, a summons is “a writ or process commencing the plaintiff’s action and requiring the defendant to appear and answer.” Defendant received her summons on July 13, 2011, when she was first summoned and commanded to appear and informed of her initial trial date of July 19, 2011. She was not entitled to a second summons.

A summons informs a party an action has been filed against that party. By the time of the hearing on her Motion To Set Aside The Default, Defendant already (1) knew the action was

⁵⁰ The Rule states the following:

Summons. The summons in an eviction action shall be a document separate from the complaint, shall be issued in accordance with applicable statutory provision, and shall identify the defendant to the action. If the name of a defendant is unknown, the summons and complaint may name a fictitious defendant and any occupants of the property. The court shall liberally grant leave to amend the complaint and summons to reflect the true names of defendants if they become known to the plaintiff. The summons shall include the following:

- (1) Name of the court and its street address, city, and telephone number;
- (2) Date and time set for the trial of the matter;
- (3) Notice that if the tenant fails to appear, a default judgment will likely be entered against the tenant, granting the relief specifically requested in the complaint, including removing the tenant from the property; and
- (4) A disclosure in substantially the following form: “Requests for reasonable accommodation for persons with disabilities should be made to the court as soon as possible.”
- (5) In residential property actions only, on a separate page served upon the tenant, the information contained in the Residential Eviction Procedures Information sheet substantially in the form included as Appendix A to these Rules.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000786-001 DT

03/29/2012

filed; (2) received a summons and legal notice of the action; and (3) had appeared and participated in the action by filing her Motion To Set Aside The Default. Because the parties had appeared, the trial court expeditiously set the trial matter on its calendar. RPEA, Rule 11(c) states: “Whenever possible, the trial should be held on the initial return date.” The trial setting occurred long after the initial return date. Additionally, detainers—forcible or special—are limited, expedited matters. *Old Bros, Lumber Co. v. Rushing*, 64 Ariz. 199, 204, 205, 167 P.2d 394, 399 (1946). While Defendant is correct that the trial date must be at least two days following the service of the summons in the action, Defendant had long since been summoned to court. Trial was originally set for July 19, 2011 and—but for Defendant’s missed arrival at court—would have occurred on that date. Defendant is not entitled to additional preparation time because she missed her original court date.

Defendant knew—or should have known—trial was possible if she prevailed on her Motion To Set Aside The Default. She had the opportunity to gather her necessary evidence and witnesses prior to the first trial setting and should have been prepared for trial when it was originally set. Because she was properly notified about the original court date, she knew—or should have known—what she needed to prepare for trial. This Court finds no error in setting the trial on an expedited basis. Furthermore, when the trial began, Defendant announced she was “ready.”

Defendant was actually asking for a continuance when she requested additional time to prepare for trial. Trial courts are empowered to control their own trial calendars and decide if continuances are appropriate. In *State v. Lamar*, 205 Ariz. 431, 72 P.3d 831 ¶ 27 (2003) the Arizona Supreme Court stated: “The court must consider the defendant’s right in conjunction with a victim’s constitutional right to a speedy trial and the trial court’s prerogative to control its own docket.”

While this Court is well aware Defendant represented herself,⁵¹ in Arizona, people who represent themselves are held to the same standards as lawyers. In *In re Marriage of Williams*, 219 Ariz. 546, 200 P.3d 1043 ¶ 13 (Ct. App. 2008) the Court held:

Parties who choose to represent themselves “are entitled to no more consideration than if they had been represented by counsel” and are held to the same standards as attorneys with respect to “familiarity with required procedures and . . . notice of statutes and local rules.” A party’s ignorance of the law is not an excuse for failing to comply with it.

[Citations omitted.] Similarly, in *Higgins v. Higgins*, 194 Ariz. 266, 279, 981 P.2d 134, 138 (Ct. App. 1999) the Court ruled:

One who represents herself in civil litigation is given the same consideration on appeal as one who has been represented by counsel. She is held to the same

⁵¹ Defendant had an advisory attorney present in the courtroom.
Docket Code 512

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000786-001 DT

03/29/2012

familiarity with court procedures and the same notice of statutes, rules, and legal principles as is expected of a lawyer.

[Citations omitted.] Accord, *Kelly v. NationsBanc. Mortg. Corp.*, 199 Ariz. 284, 17 P.3d 790, ¶ 16 (Ct. App. 2001).

Defendant did not effectively show she suffered prejudice by having a trial on the same day as her hearing. Inconvenience is not synonymous with prejudice. This Court notes that Defendant never asserted she had witnesses with her—in July—at the day and time when her original trial was set. She never mentioned the presence of or need for witnesses in (1) her Motion To Set Aside The Default; (2) at the hearing on the Motion To Set Aside The Default; or (3) at her trial.

Because (1) trial courts have the right to control their own calendars; (2) special and forcible detainer actions are summary proceedings; (3) Defendant should have been aware of the possibility of an immediate trial setting if she prevailed on her Motion To Set Aside The Default; and (4) Defendant did not allege she was deprived of her right to present evidence or witnesses on her behalf, this Court finds the trial court did not err when—immediately after its ruling on the Motion To Set Aside The Default—it scheduled the trial to begin that same day.

C. Did The Trial Court Violate Defendant's Constitutional Rights.

Defendant's second point is the trial court violated her Constitutional rights. Although Defendant cited the Fifth Amendment, she failed to (1) apprise this Court as to how the trial court violated her constitutional rights and (2) provide legal authority supporting her position. Instead, Defendant alleged—as subsections to her argument—(1) there was a good faith dispute between the parties and (2) damages were not due and owing until Plaintiff won at trial because the parties had a dispute. Defendant provided no authority for the premise that damages were not due until Plaintiff won the trial.

Defendant appears to have premised her constitutional argument on due process. She argued “when there is a good faith dispute between the parties, the parties are entitled to an appropriate hearing before penalties are imposed by a court.”⁵² This Court fails to understand Defendant's argument. Defendant was granted an “appropriate hearing.” She had a trial and was given the right to present her testimony and to cross-examine the witnesses presented against her. She even had counsel available to her and—although she chose to proceed pro se—had the ability to consult with counsel during the trial. The trial court imposed no penalties against her. A penalty is a form of punishment and is distinguishable from an award for damages. Black's Law Dictionary defines penalty as:

Punishment imposed on a wrongdoer, usu. in the form of imprisonment or fine;
esp. a sum of money exacted as punishment for either a wrong to the state or a

⁵² Appellant's Memorandum, at p. 5, ll. 10–12.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000786-001 DT

03/29/2012

civil wrong (as distinguished from compensation for the injured party's loss).
Though usu. [f]or crimes, penalties are also sometimes imposed for civil wrongs.

Defendant appears to argue she was not responsible for the charges for the toilet snaking or screen repair until after the trial concluded, and therefore, Plaintiff could not have added these sums to the rent. This belies Arizona's statutory scheme for evictions and landlord-tenant disputes. The essence of Defendant's claim is that no tenant is responsible for damages unless and until the landlord sues for the money owed and a trial is held. Defendant provided no authority for this position which this Court finds is contrary to the remedy provided in A.R.S. §33-1369.

As of July 1, 2011, Defendant allegedly owed rent⁵³ as well as damages for the costs of repair to the toilet and screen.⁵⁴ Plaintiff asserted these repair charges became additional rent, pursuant to A.R.S. §33-1369. Both the screen and the toilet were repaired in May and Defendant was assessed the charges for these repairs in May. The May 11, 2011, "30 Day Notice to Pay for Repairs/Damages"—Plaintiff's Exhibit 2—specifically informed Defendant that Management saw her kitchen screen was bent and broken and had given maintenance a work order to replace the screen. Management sent a written notice which included the following language:

You must pay for your screen by June 11, 2011.

As provided in our Rental Agreement (Paragraph 11) and by law, you are required to reimburse Management for the attached invoices within 30 days.

Failure to reimburse Management or sign a promise to pay within thirty (30) days of the invoice date will be an event of material non-compliance authorizing Management to terminate your Rental Agreement without further notice.

⁵³ The term "rent" has been defined both by statute and case law. A.R.S. § 33-1310 defines rent as "payments to be made to the landlord in full consideration for the rented premises." The Arizona Court of Appeals, in *Pavilion Hotel, Inc. v. Valley Nat. Bank of Arizona*, 180 Ariz. 498, 504, 885 P.2d 186, 192 (Ct. App. 1994) quoted with approval from Black's Law Dictionary the definition of rent as "consideration paid for use of occupation of property. 1297 (6th ed. 1990)." Both of these definitions are broad enough to also include mandated repair costs that have been transformed by law or agreement into rent.

⁵⁴ Neither Plaintiff nor Defendant provided this Court with any reference to Arizona case law discussing when repairs can become rent under our statutory scheme. This Court has been unable to locate any binding case law. It is therefore instructive to look at case law from our sister states. In *Ivy Hill Park Apartments v. Sidisin*, 258 N.J. Super. 19, 22, 609 A.2d 54, 56 (N.J. Superior Court 1992) the New Jersey Court ruled their ordinance as well as the lease was broad enough to include an entitlement for damages as rent. In *Ivy Hill Park Apartments, id.*, the landlord added the cost of repairing the plumbing to the tenant's monthly rent after the tenant flushed cat litter down the toilet. Although the New Jersey Court ultimately determined the total cost could not be added to one month's rent, the rationale behind the decision was the monthly rent was for \$302.39 and the cost of the repair was \$1,640.00. Because the repair cost imposed a 600% increase in the month's rent, and because tenants were not required to pay more than a 25% increase during any one year under New Jersey's law, the court found the collection of damages as rent in that situation violated New Jersey's rent control law. However, the decision did allow for the concept of including damages as rent.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000786-001 DT

03/29/2012

Defendant received a similar notice about the toilet repair on May 23, 2011, again informing Defendant about the 30-day requirement for payment.⁵⁵

Although Defendant sent a letter—Defendant’s Exhibit 3—to the property management on May 24, 2011, disputing the charges for the toilet repair, Defendant did not file any action challenging these charges in May or June. Similarly, she presented no evidence indicating she ever legally disputed the charges for the screen repair in May or June. She became responsible for these charges and—per A.R.S. § 33–1369, the charges became part of the rent due and payable for July, 2011,—“rent on the next date when periodic rent is due.” Defendant failed to pay this additional rent with her rent payment for July. As stated above, she also failed to formally dispute these charges. When she was served with the initial complaint alleging these charges she did not file an answer. RPEA, Rule 7 states (1) a defendant shall state any defenses the defendant wishes to assert and (2) the answer is due on or before the initial return date. Defendant also did not file any counterclaim. Defendant did not actually contest the charges for these repairs until July 22, 2011, when she filed her Motion To Set Aside The Default.⁵⁶

When Defendant moved into the property, she signed a Schedule of Charges. At the bottom of the page, she signed “I (we) acknowledge and understand that I (we) will be invoiced for any damages (interior or exterior) as a result of negligence. Further, I (we) understand that I have 30 days from date of invoice to pay for any damages to my unit during my occupancy.”

In her Appellate Memorandum, Defendant asserted the novel position that the trial court had no basis to determine Defendant owed the charges for the repairs in July and—only after prevailing at trial—could Plaintiff collect for these charges. Defendant provided no support for this assertion. Debts relate back to the date when the debt is incurred and not to the date when a debt is adjudicated. *Arab Monetary Fund v. Hashim*, 219 Ariz. 108, 193 P.3d 802, (Ct. App. 2008). In *Arab Monetary Fund v. Hashim, id.*, the Court of Appeals ruled on whether the litigation costs for a lawsuit dealing with the husband’s pre-marriage receipt of embezzled funds could be attributed to the marital community. In ruling that the conduct giving rise to the debt occurred prior to the marriage and therefore the debt was not a community debt, the Court acknowledged:

The parties agree that a debt is incurred at the time of the actions that give rise to the debt.

Arab Monetary Fund v. Hashim, id., 219 Ariz. at 111, 193 P.3d at 805, ¶ 17. Similarly, the debt for the repairs occurred when the repairs occurred—in May, 2011.

This Court recognizes that—at the time of trial—Defendant disputed whether the damage was caused by her negligence. However, after reviewing the evidence, this Court concurs in the

⁵⁵ Plaintiff’s Exhibit 3.

⁵⁶ On August 18, 2011, Defendant filed a “Respond [sic] and Reply to the Filed Papers of the Plaintiff” where she alleged she denied “all allegation [sic] in the plaintiffs [sic] complaint and motion or opposition to defendants [sic] motion to set a side [sic] judgment.”

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000786-001 DT

03/29/2012

trial court's determination that Defendant did not adequately refute Plaintiff's claim and—aside from her own testimony—provided little support for her position. Defendant admitted to the possibility that one of her children might have thrown a toy down the toilet. This Court finds it equally plausible to consider that one of the children may have thrown or dropped a bar of soap into the toilet. Although Defendant asserted she did not see a bar of soap on the end of the snake, she never stated she did not see bar soap residue. In contrast, Plaintiff provided a statement from the repairman indicating bar soap was found when the repairman snaked the toilet. Similarly, Defendant's own testimony supports a conclusion that the screen damage was caused from inside the apartment. Defendant spoke about a window glass that prevented the screen from bending inward. The window glass would not necessarily prevent the screen from bending outward if the window was open. The testimony of (1) Plaintiff's witnesses and (2) Defendant indicated the screen was pushed from the inside out as opposed from the outside in—thus indicating Defendant's responsibility for the screen damage. Plaintiff supported its claim about Defendant's responsibility for the screen repair and toilet snaking charges.

A.R.S. § 33-1369 provides authority for a landlord to repair damages, submit an itemized bill, and charge unpaid damages as rent on the next date when rent is due. This is what Plaintiff did. While the statute requires the repairs affect health and safety issues, Defendant agreed the snaking of the toilet was a health and safety issue. She requested that the Plaintiff take care of this problem and asked the repair be done on an expedited basis. While Defendant may not have viewed a broken screen in the same light as the toilet snaking, Plaintiff's witnesses testified a broken screen posed safety problems. This Court concurs.

Finally, Defendant's conduct belied her assertions about her responsibility for the window screen and toilet. She purchased a money order to cover the "damage" but never indicated she was paying these damages under protest. In contrast, when she purchased a money order to cover disputed late fees she did indicate her protest to these fees.

Because Defendant had (1) the opportunity to present her position; (2) had counsel available to assist her; (3) had the opportunity to cross-examine the witnesses against her; and (4) participated fully in the trial, the Court finds no due process violation. Defendant's due process claim fails.

D. Did The Trial Court Err In Interpreting A.R.S. § 33-1371

Defendant's third claim is the trial court misinterpreted A.R.S. § 33-1371 A which states—in part:

A landlord is not required to accept a partial payment of rent or other charges.

Defendant asserted the statute means a landlord cannot join rents with disputed debts but must, instead, either accept or reject the base rent and postpone any other charge for a later determination. This Court notes there is no case law specifically construing the statute. Defendant's assertion contradicts the plain meaning of the statute. Although Defendant posited her

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000786-001 DT

03/29/2012

position as one supporting a constitutional interpretation, Defendant did not indicate how or why this is a constitutional argument—particularly in Defendant’s case. As stated in the preceding section, as of the time Plaintiff refused the first partial payment on July 5, 2011, Defendant had no disputed debt with Plaintiff. She had filed no lawsuit and made no claim. As of July 5, 2011, Plaintiff had the ability to reject Defendant’s attempt at a rent payment because the “damages” had—per A.R.S. § 33-1369—been transmuted into a rental obligation Defendant had not contested.

Defendant’s attempt at statutory construction flies in the face of the plain meaning rule. When construing statutes, the court must read the statute as a whole and give effect to the statute’s plain meaning when possible. (“If a statute’s meaning is clear and unambiguous, we give effect to its plain language without resorting to other rules of construction.”) *Arizona Dept. of Revenue v. Salt River Project Agricultural Improvement and Power Dist.*, 212 Ariz. 35, 126 P.3d 1063 ¶15 (Ct. App. 2006); A.R.S. § 1-213. Furthermore,

Statutory language is the best indicator of that intent and we will give terms their ordinary meaning, unless the legislature has provided a specific definition or the context of the statute indicates a term carries a special meaning.

State v. Oaks, 209 Ariz. 432, 104 P.3d 163 ¶10 (Ct. App. 2005) (citations omitted). No special meaning is needed here and there is no indication the legislature intended to separate the other charges from the rent in providing landlords the opportunity to reject payments. Here, Defendant is arguing the screen repair and the toilet snaking fall within the rubric of “other charges.” As seen in the preceding section, these charges—because they were not paid within 30 days—became rent.

This Court is sensitive to Defendant’s reference about unscrupulous landlords who might abuse tenants with phony charges. In such instances, these potential tenants are not without remedies. Unlike Defendant’s assertion that any interpretation of the statute contrary to that posited by Defendant would allow:

. . . unscrupulous landlords to extort payments from their tenants. As such this process would effectively deprive tenants of their right to due process⁵⁷

tenants retain their rights to seek judicial intervention. Defendant’s argument is no more than a straw man which Defendant advocated simply so she could knock it down. Because Defendant had exhausted her 30-day time period in which to pay for the screen repair and toilet snaking—or seek judicial intervention—in June, 2011, and because the sum then became part of the July rent, the trial court did not err when it determined the total rental amount due on July 1, 2011, was the base amount of \$65.00 plus the additional \$75.00 for the two repairs. Defendant did not submit the amount due before July 6, 2011. Therefore, Plaintiff could—and did—reject the \$65.00 partial payment Defendant submitted. This payment was sent back to Defendant. After the initial

⁵⁷ Appellant’s Memorandum, p. 7, ll. 15–16.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000786-001 DT

03/29/2012

payment was sent back, Defendant tried—on July 8, 2011,—to make a payment of \$75.00. This amount was less than the total amount owed because (1) it did not include the base rental amount of \$65.00 and (2) did not include applicable late fees that began accruing as of July 6, 2011. Plaintiff could—and did—reject this as a partial payment. Finally, Defendant—on July 11, 2011, sent a third payment of \$50.00. Plaintiff rejected this, as well.

A.R.S. § 33-1371 is a harsh remedy and one that favors landlords. However, this is the remedy our Legislature has fashioned. While the practice of evictions may not seem equitable—particularly to tenants with limited bargaining ability—eviction actions are summary statutory proceedings. RPEA, Rule 2. Here, the landlord—Plaintiff—was given options by the statute. It could either accept a partial payment and forego its right to terminate the rental agreement or it could reject the payment, and keep open the option of terminating the agreement. Plaintiff chose to refuse payment. The plain meaning of the statute allowed for this choice.

E. Did The Trial Court Err In Failing To Require Plaintiff to Act In Good Faith

Defendant's last claim was the trial court erred by not requiring Plaintiff to specifically inform Defendant (1) the sum due was required to be paid in one payment and (2) what its "intended course of action" would be if Defendant did not comply. Defendant argued Plaintiff had a good faith obligation to inform her they were returning the \$65.00 in their 5-day notice. Notably Defendant did not argue Plaintiff failed to notify Defendant it returned the payment because Plaintiff sent Defendant a certified letter with this information. Instead, under the rubric of "good faith" Defendant argued that Plaintiff had an obligation to amend its 5-day notice to inform her about Arizona's statutes. Defendant provides no authority imposing such obligation on this or any landlord. Because Plaintiff (1) returned the payments and (2) sent 5-day notices indicating the total amount due Plaintiff complied with Arizona's statutory requirements. While this Court does not doubt Defendant attempted to comply with what she believed to be the requirements necessary to avoid eviction, she did not succeed in her efforts. Undoubtedly, this is a harsh result. However, the law does not mandate kindness.

III. CONCLUSION.

Based on the foregoing, this Court concludes the Kyrene Justice Court did not err.

IT IS THEREFORE ORDERED affirming the judgment of the Kyrene Justice Court.

IT IS FURTHER ORDERED remanding this matter to the Kyrene Justice Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Myra Harris
THE HON. MYRA HARRIS
Judicial Officer of the Superior Court

033020120735